

January 28, 2000

Mary L. Cottrell, Secretary

Department of Telecommunications

and Energy

One South Station

Boston, Ma 02110

**Re: D.T.E. 98-32-E; Proposed Rules Governing The Restructuring Of The Natural Gas Industry; Comments of the Attorney General**

Dear Madame Secretary:

Enclosed for filing please find an original and twelve copies of the Comments of the Attorney General on the above-referenced, proposed regulations. Please also note that this letter will be sent electronically to the address as noted in the Department's Notice of Rulemaking.

I, the undersigned, hereby certify that a copy of the above-referenced document was served upon the official Service List of this proceeding.

Thank you for your assistance.

Sincerely,

John M. Grugan

Assistant Attorney General

cc: Service List

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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Rulemaking to Establish Rules Governing the )

Unbundling of Services Related to the ) D.T.E. 98-32-E

Provision of Natural Gas )

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### Comments of the Attorney General

#### I. Introduction

By its Notice of Rulemaking, issued on December 17, 1999, the Department invited comment on its proposed regulations intended to govern the relations between and among gas customers, suppliers and local distribution companies. The Attorney General hereby submits for the Department's consideration, comments which address consumer notification issues, as set forth below.

## II. Discussion

### Section .04(3)(e)Notice of Termination

As proposed, this regulation provides that a non-residential Retail Customer does not have to be notified of termination by a Supplier if a breach of contract has occurred. The Attorney General recommends that the proposed regulation be modified to require notification of termination under all conditions:

(e) A Supplier must notify a Retail Customer of termination of Supplier Service at least ten days before termination., ~~when such termination is due to reasons other than breach of contract.~~ Such notice must be in writing, addressed to the Retail Customer's billing address, and mailed first-class.

As proposed, the regulation would allow a competitive Supplier to terminate service to non-residential customers without notice when a breach of contract has occurred. It does not, however, specify how and by whom a breach of contract is to be determined. If a final order from a court of law is required for a party to be adjudged in breach of contract, the regulation must so specify. Otherwise, the regulation as proposed is unworkable. To allow a "breach of contract" exemption from the notice of termination requirements without defining breach of contract could allow Suppliers to make this determination unilaterally, with customers at the mercy of the Supplier's view of what is and what is not a "breach."

It should be noted that the proposed language is not consistent with the Department's existing regulations governing the provision of competitive electric generation service. 220 CMR 11.05:(3). These regulations expressly require that all customers must receive a notification of termination of generation service at least ten days prior to termination for "reasons other than non-payment". 220 CMR 11.05:(3)(f).

While the proposed regulations do not extend this new "breach of contract" exemption to the termination of sales to residential consumers, no reason has been suggested as to why "breach of contract" rather than "non-payment" is an appropriate exception from the requirement of notice prior to termination of gas sales and the Attorney General is concerned that the proposed new exemption may result in an inappropriate balance of bargaining positions between suppliers and businesses. As is the case in sales of electric power, so long as a customer has paid its bill, it should not be exposed to termination of service without any prior notice.

### III. Conclusion

For the reasons stated herein, the Department is respectfully requested to adopt the changes to the proposed regulations as discussed above.

Respectfully submitted,

THOMAS F. REILLY

ATTORNEY GENERAL

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